

The Retailers' Occupation Tax Act provides an exemption for tangible personal property sold to interstate carriers for hire for use as rolling stock moving in interstate commerce or to lessors of such interstate carriers. See 35 ILCS 120/2-5(12) and (13) (1996 State Bar Edition). (This is a GIL).

September 21, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 26, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are writing on behalf of our client, COMPANY to request an opinion letter regarding (1) the applicability of the Illinois use tax to its proposed purchase of six new barges, and (2) if the tax is inapplicable, then for the procedure, if any, required for so certifying.

#### **Facts**

COMPANY, a Delaware corporation, registered to do business in Illinois, is engaged in the business of leasing barges to towboat companies moving freight on navigable waters such as the Mississippi and the Missouri Rivers. COMPANY' 'home port' is CITY/STATE. All of COMPANY', vessels are registered with the Coast Guard.

Under the proposed transaction, COMPANY will purchase six new barges from the manufacturer, which is located in STATE. At the time of the purchase, the barges will be subject to a five-year lease under which COMPANY is the lessor. The lessee under such lease is an interstate carrier for hire which will use the barges as rolling stock moving in interstate commerce. The lessee is also registered with the Coast Guard.

#### **Law**

The Illinois Use Tax is imposed under 35 ILCS 105/3, and applies to the privilege of using tangible personal property in the State of Illinois. Exempt from the use tax, among other things, is 'rolling stock.' 35 ILCS 105/3-60. The rolling stock exemption applies generally to rolling stock used by an interstate carrier for hire.

*Id.* Further, under Section 3-55 of the Use Tax Act, the tax does not apply to the use of tangible personal property by lessors under a lease of greater than one year where the lessee is an interstate carrier for hire. 35 ILCS 105/3-55. Specifically, Section 3-55 provides:

Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

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(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce.

*Id.*

Section 150.310 of the Use Tax Regulations expands upon the above, and goes on to state that the principals of Section 130.340 of the Retailers Occupation Tax Regulations (86 Ill. Adm. Code 130.340) apply for Use Tax Purposes. 86 Ill. Adm. Code 150.310.

### **Analysis**

The question is whether the terms of the proposed transaction will be exempt from Use Tax under Section 3-55 of the Use Tax Act. Our analysis leads us to conclude that the use tax does not apply because: (1) COMPANY, is a lessor under a five year lease; (2) such lease will be in effect at the time of the purchase; (3) the lessee is an interstate carrier for hire; and (4) the barges will be used as rolling stock moving in interstate commerce.

Assuming the above conclusion is correct, such that the use tax will not apply, then the next question is whether--and if so, how and to whom--COMPANY should certify that the transaction is exempt.

Paragraph (e) of Section 130.340 of the Retailers Occupation Tax Regulations of the provides, among other things, that-

...(i)f the purchaser is a long-term lessor (under a lease of one year or more in duration), the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire.

It appears that 'similarly identifying the lessee' means including on the certification the lessor's Interstate Commerce Commission (ICC) Number, or that the lessor is a type of interstate carrier for hire that is not required by law to have an ICC number. However, if the lessee/carrier is a type which is subject to regulation by some Federal regulatory agency, other than the ICC, then the lessee/carrier's registration number from that other government regulatory agency, such as the Coast Guard, is to be included. 86 Ill. Adm. Code 130.340.

We have asked a representative of your office, by telephone conversation, what type of certification is required to show that the exemption applies, and she states that the certification must be on the Department of Revenue's Form RUT-7, 'Rolling Stock Certification.' Step One of that form asks the preparer to identify how the Certification is to be used. However, none of the possible selections in Step 1 apply to the transaction in question.

For example, the general instructions for Form FUR-7 indicate that the form is to be attached to, among other things, Form RUT-25, 'Use Transaction Return.' The Form RUT-25 is filed when the item that qualifies as rolling stock is purchased from an out-of-state dealer. However, it appears that the Form RUT-25 is only required to be filed in cases where the buyer makes a purchase from an out-of-state dealer, and the item purchased is required to be titled or registered in *Illinois*.

The new barges are to be registered with the Coast Guard, a Federal government regulatory agency, and the barges are apparently not required to be titled or registered in Illinois. Therefore, it appears that COMPANY is not required to prepare and file Form RUT-25. If the Form RUT-25 is not required, then it does not appear necessary to prepare the Form RUT-7.

One other possible form considered is ST-44, Illinois Use Tax Return. However, upon reading the instructions for that return, it also appears to be applicable.

Given the above, then, it is unclear whether COMPANY, is required to certify that the transaction is not subject to use tax. If it is required to so-certify, then to whom is such certification to be made? The seller? The Secretary of State? How?

Your guidance would be appreciated.

The Retailers' Occupation Tax Act provides an exemption for tangible personal property sold to interstate carriers for hire for use as rolling stock moving in interstate commerce or to lessors of such interstate carriers. See 35 ILCS 120/2-5(12) and (13) (1996 State Bar Edition). The Use Tax Act provides for the same exemption. See 35 ILCS 105/3-55 (1996 State Bar Edition). The exemption is described in the enclosed copy of 86 Ill. Adm. Code 130.340. The carrier must move in interstate commerce on a regular and frequent basis in order to qualify for the exemption.

Please note that for a lease transaction to qualify for the rolling stock exemption, the lease must be for 1 year or longer and be in effect at the time the property is purchased. Further, the lease cannot have provisions providing for recall and use of the property by the lessor.

When making a purchase of qualifying property, the purchasers must provide the sellers with a certification that they are interstate carriers for hire and that they are purchasing the property for use as rolling stock moving in interstate commerce. If the purchasers are lessors, the purchasers must give the sellers a certification to that effect identifying the lessee interstate carriers for hire. Form RUT-27, Rolling Stock Affidavit, which is signed by the purchasers, is used to provide the required certification in order to execute the statutory exemption. We understand that you have a unique factual situation. Please insert information applicable to your situation in the appropriate area on the form. Give the form to your supplier and keep a copy for your records.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.